IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 4117 of 2005
Date of Decision: 19.09.2006

M/s Denso Haryana Private Limited ...Petitioner

Vs.

Anshu Mishra & Anr. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.M.L.Sarin, Senior Advocate, with
Mr.Ritesh Mukherjee, & Mr.Rohit Sapra, Advs.,
for the petitioner.

Mr.Amar Vivek, Advocate,
for respondent No. 1.

Vinod K.Sharma, J.

Present revision petition has been filed against the order dated 4.4.2005 passed by the learned Civil Judge (Junior Division), Gurgaon dismissing the application moved by the petitioner under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure (for short the Code).

The petitioner herein had moved an application under Order 7 Rule of the Code on the plea that the suit filed by the respondent-plaintiff arises out of cause of action set out by the plaintiff in the plaint namely the

alleged arbitrary and highhanded manner in which the inquiry has been carried out against the plaintiff in pursuance to the charge-sheet dated 21.2.2003 which according to the plaintiff-respondent was based on baseless allegations. The plaintiff-respondent in the suit had sought a declaration that the inquiry was arbitrary and bad in law and to abstain the inquiry officer to prepare any inquiry report on the basis of such inquiry and further restraining the petitioner herein from terminating the plaintiff on the basis of said inquiry.

It was further the case of the petitioner that the said inquiry and proceedings in pursuance to the said charge-sheet were dropped on 21.2.2003 and therefore, the cause of action in the present suit has ceased to exist and the suit was rendered infructuous. It was further the case of the petitioner that the suit in the present form did not disclose any cause of action as on date and accordingly, it was prayed that it would be just and proper to reject the plaint under Order 7 Rule 11 read with Section 151 of the Code.

The application filed by the petitioner was contested by the plaintiff-respondent and it was submitted that the application was totally mala fide and baseless and the same was filed simply to prolong and delay the case. It was further the case of the plaintiff-respondent that merely by dropping of inquiry proceedings in order to somehow bye pass the injunction order passed by this Court and with view to pressurise and harass the plaintiff-petitioner herein could not ask for rejection of the plaint.

It was also the case of the plaintiff-respondent that the termination order passed by the petitioner was nothing but a false excuse

and colorable device to get rid of the plaintiff-respondent. It was further submitted that when the facade of bogus inquiry got conducted by the plaintiff defendant no.1 was exposed, it resorted to wrongful and illegal act of terminating the services of the plaintiff-respondent vide letter dated 17.6.2003 which is in continuation of the original design of defendant No.1 to somehow remove the plaintiff-respondent from her job. The plaintiff respondent further submitted that she had already claimed requisite relief and the suit could not be defeated on the false and frivolous ground mentioned in the plaint and therefore, it was prayed that the application be dismissed.

The contention of the learned counsel for the petitioner before the learned Trial Court was that in pursuance to the dropping of charge-sheet dated 21.2.2003 as well as he inquiry against the plaintiff no cause of action subsists in favour of the plaintiff to continue with the present suit. It was further contended by the petitioner herein that the services of the plaintiff-respondent were terminated vide order dated 17.6.2003 on the allegations other than those on the basis of which charge-sheet dated 21.2.2003 was issued to the plaintiff and thus, the termination of the plaintiff-respondent vide order dated 17.6.2003 on the new and distinct cause of action entirely different from the original cause of action has arisen in favour of the plaintiff-respondent and therefore, she if so advised could institute fresh civil suit against the petitioner.

It was further the contention of the learned counsel for the petitioner that the present suit could not proceed further as there was no subsisting cause of action in favour of the plaintiff. In support of this

contention reference was made to order passed by the learned lower Court on an application moved under Order 39 Rules 1 and 2 read with section 151 of the Code as well as on application moved for amendment of the plaint under Order 6 Rule 17 read with section 151 of the Code filed by the plaintiff-respondent. Learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Pasupuleti Venkateswarlu Vs. The Motor & General Traders AIR 1975 SC** 1409 to contend that it was open to the Court to take into consideration subsequent events taking place after the institution of the present suit and reject the plaint under Order 7 Rule 11 of the Code. Whereas, learned counsel for the plaintiff-respondent before the learned Trial Court contended that in case cause of action had ceased to exist due to some subsequent events taking place during the pendency of the civil suit then the same is not a justiceable ground to reject the plaint but the same ground may be good enough to dismiss the suit on merit after the parties have led their evidence and trial has concluded. It was the further case of the plaintiff-respondent that for seeing whether the plaint disclosed a cause of action or not it is the plaint which has to be considered. The defence of the defendant in the written statement and other material on the file was not to be considered for the said purpose. It was further the case of the plaintiff-respondent before the Trial Court that for the purpose of rejection of the plaint rights of the parties on the date of the institution of the suit are to be seen and subsequent act of defendant during the pendency of the suit could not be a ground for rejection and the matter was required to be decided on merit in accordance with law. In support of this contention reliance was placed on the following

judgments

"D.Ramachandran Vs. R.V.Janakiraman and others 1999 (3) Civil Court Cases 171 (SC); Bajaj Auto Limited and others Vs. Sundeep Polymers Pvt. Ltd. Mumbai 2005 (1) Civil Court Cases 56 (Bombay); Teja Ram Vs. Birbal Ram 2004 (2) Civil Court Cases 562 (Rajasthan); M/s Bajaj Electricals Ltd.Vs. M/s S.Electromast Industries 1992 Civil Court Cases 787 (P&H); ABN Amre Bank Vs. The Punjab Urban Planning and Development Authority 1999 (3) PLR 479 and Nand Kishore Marwah and others Vs. Smt. Samundri Devi 1987 (2) RCR 412."

The learned Trial Court agreed with the contention raised by the learned counsel for the respondent and dismissed the application by holding that in order to see as to whether the present suit discloses a cause of action or not this Court has to take into consideration the pleas raised in the plaint only and nothing else. It was further held that the Court was to see the right of the parties as on the date of the institution of the present suit and accordingly the learned Trial Court held that subsequent act of the petitioner herein was not to be seen therefore, rejected the application.

Mr.M.L.Sarin, learned senior counsel appearing for the petitioners placed reliance on the order passed by this court on an application moved by the plaintiff-respondent under Order 6 Rule 17 of the Code to amend his plaint which was dismissed by the learned Trial court and revision against the said order was also dismissed. This Court while dismissing the revision petition held as under:

> " After hearing the learned counsel and perusing the order recorded by the learned Civil Judge, I am of the considered view that this petition is liable to be dismissed because after the filing of the suit based on charge sheet dated 21.2.2003, the charger sheet itself has been dropped and the services of the plaintiff-petitioner have been terminated on the basis of an order dated 17.6.2003, which is based on entirely new facts and allegations. This order brings into existence a new cause of action. No prejudice is caused to the plaintiff-petitioner. Even otherwise, there is no legal infirmity in the well recorded order of the learned Civil Judge which is fully supported by the judgments of the Supreme Court in the cases in M/s Ganesh Trading Co. (supra) and Shikharachand Jain (supra). Therefore, I do not find any merit in this petition. Dismissed."

The contention of the learned counsel for the petitioner was that once this Court has positively held that the charge-sheet dated 21.2.2003 was dropped and the services of the plaintiff-respondent were terminated thereafter on 17.6.2006 entirely new facts and allegations, therefore, a new cause of action has arisen to the plaintiff-respondent. The contention of the learned counsel for the petitioners was that in view of this finding there was no subsisting cause of action in favour of the petitioners to continue with the suit.

Mr. M.L.Sarin, learned senior counsel for the petitioner thereafter by placing reliance on the judgments of the Hon'ble Supreme

Court in **Pasupuleti Venkateswarlu Vs. The Motor & General Traders AIR 1975 SC** 1409 **and Shikharchand Jain vs. Digamber Jain Praband Karini Sabha and others AIR 1974 SC 1178** contended that it was open to the court to take subsequent events into consideration while adjudicating the rights of the parties. He made special reference to para No.4 of **Pasupuleti Venkateswarlu's** judgment and para No.11 of **Shikharchand Jain's** case which read as under:-

> "4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our procedural jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice – subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation

pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into S.10 (3) (iii) itself. We are not disposed to disturb this approach in law or finding of fact.

11. He also prays for the renumbering of present paragraph 12 as Sri Tarkunde has submitted that if the assertions made in the new paragraph 12 are accepted by the Court, the respondent's suit will have to be dismissed. It is also said that the new situation arising on the death of Smt.Rajrani during pendency of the appeal can be considered by the Court in order to mould the decree in the suit out of which this

> appeal has arisen. In our view, Mr.Tarkunde, is right in this submission. Ordinarily, a suit is tried in all its stages on the cause of action as it existed on the date of its institution. But it is open to a Court including a court of appeal to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate; or (2) where it is necessary to take notice of the changed circumstances in order to shorten the litigation, or (3) to do complete justice between the parties (See Rai Charan Vs. Biswanath AIR 1915 Cal.103)."

The contention of the learned counsel for the petitioner therefore, was that once the very basis of the cause of action on which the suit was based ceased to exist it was not open to the Court to reject the application merely by holding that for the purposes of Order 7 Rule 11 of the Code the court is to see the plaint and not make reference to any other and cannot take notice of the subsequent events.

Mr.Amar Vivek, learned counsel appearing for the respondents in support of his contention vehemently argued that the order passed by the learned Trial Court cannot be faulted with as it is based on well established principle of law that for the purposes a decision on an application moved under Order 7 Rule 11 of the Code the court has to see the averments made in the plaint and it is not open to see the defence raised by the defendant. In support of this contention he placed reliance on the judgment of this Court

in the case of **ABN-Amre Bank Vs. The Punjab Urban Planning and Development Authority (1999-3) PLR 479; M/s Bajaj Electricals Ltd. Vs. M/s Electromast Industries 1992 Civil Court Cases 787; Bajaj Auto Limited & Ors. Vs. Sundeep Polymers Pvt. Ltd. 2005 (1) Civil Court Cases 56 (Bombay); Arun Kumar Jain Vs. State Bank of India 1999 (3) Civil Court Cases 170 (P&H).** The learned counsel for the respondents refers to para No. 11 of ABN-Amre Bank's case; para No.6 of M/s Bajaj Electricals Ltd.; para No.21 of Bajaj Auto Limited's case and para No.5 of Arun Kumar Jain's case. The respective paras of above cited judgments read as under:-

> "11. Held, that well accepted cannons of civil jurisprudence makes a clear distinction between "plaintiff has no cause of action" and "the plaint does not disclose cause of action". In the earlier part, there is complete absence of a right to sue. While in the latter,the right to sue may exist, but it is not well founded on the basis of the averments made in the plaint. 'The plaint lacks essential and material particulars which would give an effective cause of action to the plaintiff. Where on the face of it, the plaint does not disclose any cause of action, the plaint may be liable to be rejected, but where the parties are to produce oral and documentary evidence to substantiate and support their cause of action and relief claimed for in the plaint, the Court has to consider the entire material placed on record and the suit would be liable to be decided on merit.

6. In view of the averments made in the plaint, it cannot be conclude at this stage that even if all the allegations are proved, plaintiffs would not be entitled to any relief, whatsoever. A distinction has to be drawn between a case where the plaint itself does not disclose the cause of action and another in which after considering the entire material on the record the Court comes to the conclusion that there is no cause of action. The present case does not certainly fall in the first category and therefore, trial Court justifiably rejected the application and directed the defendants to file written statement.

21. Though Shri Manohar has also placed reliance on the averments made in the affidavit-in-reply by the plaintiff to applicants' application under Exh.20, it will not be necessary to refer to them as the questions of jurisdiction will have to be decided on the basis of the averments made in the plaint. Shri Joshi also relied on some of the averments made in the written statement. However, the Apex Court in various cases has held that for the purpose of deciding an application under Order 7, Rule 11 (a) to (d), the averments in the plaint are only germane and that the plea as taken in the written statement is wholly irrelevant at that stage. A reference can be made in this respect to one of the readily available recent judgments of the Apex Court in the case of Sopan Sukhdeo

Sable and others Vs. Assistant charity Commissioner and others, reported in 2004 (3) SCC 137."

5. Learned counsel for the Bank, has, however, contended that petition is not entitled to the full fee in regard to the suits which had been withdrawn from him. Against this submission, petitioner has contended that at no stage, he had shown his unwillingness to conduct cases on behalf of the Bank, but the same were withdrawn on administrative grounds. Reference in this regard has been to letter dated 28.8.1992. Vide this letter, petitioner had objected to the action of the Bank in withdrawing civil suits and executions from him. In reply to this letter, Bank vide letter dated 10.9.1992 informed the petitioner that the cases have been withdrawn on the basis of an administrative decision taken at the appropriate level as per Bank's norms. It was not told to the petitioner that the cases have been withdrawn on account of some misconduct or negligence on the part of the petitioner. Having written to the petitioner that the cases are being withdrawn on the basis of some policy decision, it is not permissible or the respondent Bank to contend that the cases were withdrawn on account of some negligence on the part of the petitioner. A counsel can be denied fee only when he makes default or is guilty of any misconduct. In this case, no material in this regard has been brought on record by

> the respondent-Bank. Accordingly, I am of the view that petitioner is entitled to the fee in the cases which he had filed but evidence had not been recorded or concluded and later the said cases were withdrawn from him. However, the payment shall be made in the manner already indicated above."

In all these cases it has been laid down that it is the settled law that the plaint can be rejected as disclosing no cause of action if the court finds that it is plain and obvious that the case put forward is unarguable. Learned counsel also referred to para No.20 of the judgment in **Kasthuri Vs. Baskaran 2004-Tlmad-0-464** , wherein it has been held as under:

> "20. In this context, it would be relevant to quote the observation made by the Bombay High Court in A.I.R. 1999 Bombay 161 (supra), with which I entire agree. The observation is as follows: "it is the settled law that the plaint can be rejected as disclosing no cause of action if the court finds that it is plain and obvious that the case put forward is unarguable. The pharase "does not disclose a cause of action" has to be very narrowly construed. Rejection of the plaint at the threshold entails very serious consequences for the plaintiff. This power has, therefore, to be used in exceptional circumstances. The Court has to be absolutely sure that on a meaningful reading of the plaint it does not make out any case. The plaint can only be rejected where it does not disclose a cause of action or where the suit appears from the

statements made in the plaint to be barred by any provision of the law. While exercising the power of rejecting the plaint, the Court has to act with utmost caution. This power ought to be used only when the Court is absolutely sure that the plaintiff does not have an arguable case at all. The exercise of this power though arising in civil procedure, can be said to belong to the realm of criminal jurisprudence and any benefit of the doubt must go to the plaintiff,whose plaint is to be branded as an abuse of the process of the Court. This jurisdiction ought to be very sparingly exercised and only in very exceptional cases. The exercise of this power would not be justified merely because the story told in the pleadings was highly improbable or which may be difficult to believe. This observation would squarely applicable to the present case as well."

Learned counsel thereafter made reference to the plaint to contend that in the suit filed by the plaintiff the following prayer had been made :-

" It is therefore prayed that your honour may very kindly be pleased to pass a decree for declaration in favour of the plaintiff and against the defendants to the effect that the so-called internal enquiry held by defendant no.2 along with all its proceedings are totally void ab initio, nonest, nullity, illegal, untenable, contrary to the principles of natural justice and law and not binding in any manner on the plaintiff with consequential relief of permanent injunction restraining

defendant no.2 from submitting any report on its basis; restraining defendant no.1 from terminating the services of the plaintiff on the basis of the enquiry held by defendant no.2 and from otherwise terminating her services or removing her from the post of Engineer except strictly in due course of law with costs.

In case defendant no.1 somehow succeeds in terminating in services of the plaintiff on the basis of enquiry report of defendant no.2 or otherwise than in due course of law, in that event a decree for declaration to the effect that the termination/removal of the plaintiff is illegal, invalid and not binding on her with consequential relief of mandatory injunction directing defendant no.1 to reinstate the plaintiff on the same terms and conditions along with back salary and all other service benefits be passed. Without prejudice to the rights of the plaintiff in any manner,it is alternatively prayed that in case defendant no.1 succeeds in terminating the services of the plaintiff she is not reinstated then a decree for loss and damages to the tune of her salary, allowances and all other benefits from the date of termination till age of superannuation may also be passed along with damages for mental torture and harassment to the plaintiff with costs. Any other relief which this Hon'ble Court deems appropriate and suitable be also granted to the plaintiff"

Thus, the contention of the learned counsel for the petitioner

by reading the prayer clause was that beside challenging the issuance of charge-sheet inquiry he has also challenged the right of the petitioner herein to terminate her services and consequently she has also claimed damages. The said cause of action, therefore, could not be said to have become infructuous as claimed by the petitioner herein. Learned counsel further made reference to para No.14 of the plaint to contend that the plaintiff in the suit has also claimed damages on account of illegal deprivation of her lawful dues, mental torture and harassment. Para No.14 of the plaint reads as under:-

> "14. That the charge-sheet submitted to the plaintiff by defendant no.1 and the so called internal enquiry held by defendant no.2 are totally incorrect, baseless, untenable, farcical, eyewash, sham, bogus and totally contrary to the principles of natural justice. Defendant no.2 has deliberately not allowed the plaintiff to be represented by a counsel and this has materially affected her right to defend herself without any reasonable or sufficient cause. Defendant no.2 has acted as a mouth piece of defendant no.1. He has not faithfully and correctly recorded the proceedings and has misconducted himself. The plaintiff has come to know that defendant no.2 is none else than an associates of the Standing Counsel of defendant no.1 Shri M.M.Kaushal, Advocate, Defendant no.2 is acting as per the whims and fancies of defendant no.1 and the entire show is a means to somehow to get rid of the plaintiff. The services of the plaintiff are sought to be

terminated on the basis of enquiry report to be submitted by defendant no.2 consequent upon the false and frivolous enquiry which has not been held in accordance with law. Defendant no.2 is bent upon to submit a false report to defendant no.1 so as to provide a lever to wrongfully and illegally terminate the services of the plaintiff.

The plaintiff is a confirmed and a regular employee and her services cannot be terminated unilaterally and arbitrarily. Defendant no.1 can take action against the plaintiff only in accordance with law and after complying with the principles of natural justice. It is further submitted that some of the terms and conditions mentioned in the letter dated 23.11.2000 issued by defendant no.1 are totally illegal, untenable, contrary to public policy and law, unconscionable and not binding in any manner on the plaintiff. Defendant no.1 is bound to act in accordance with law and not at its whims without providing effective opportunity to represent her case, the series of the plaintiff cannot be terminated. The defendants are bent upon to pass stigmatic remarks against the plaintiff without following due process of law in order to wreck her career and to remove her from service. The defendants have no right to do so. The farcical enquiry so far held by defendant no.1 and report, if any, on its basis are liable to be declared as illegal, incorrect, invalid and not binding on the plaintiff. Defendant no.2 is liable to be restrained from submitting any report on the basis

of baseless and false proceedings conducted by him in a totally biased and pre-determined manner. Defendant no.1 is not entitled to terminate the services of the plaintiff on the basis of the so-called internal enquiry conducted by defendant no.2 or to otherwise dispense with her services except by following due course of law.

In case defendant no.1 succeeds in somehow terminating the services of the plaintiff on the basis of the aforesaid enquiry conducted by defendant no.2 or otherwise except by following due process of law, the action of defendant no.1 is liable to be declared as illegal, invalid, not binding on the plaintiff and the plaintiff is entitled to reinstatement with back salary and all benefits. Alternatively she is also entitled to damages on account of illegal deprivation of her lawful dues, mental torture and harassment."

Thus, the contention of the learned counsel for the respondent-plaintiff is that the suit disclosed the cause of action.

Learned counsel for the plaintiff-respondent thereafter placed reliance on the judgment of this Court in the case of **Ram Niwas and another Vs. Rakesh Kumar and others AIR 1981 Punjab and Haryana 397** to contend that it is open to the Court to mould the relief and therefore, irrespective of the subsequent order of termination having been passed the court could still grant relief on the suit framed by the plaintiff-respondent and therefore, it could not be said that there was no cause of action subsisting.

I have considered the arguments raised by the learned counsel for the parties.

It cannot be disputed that it is a settled law that in order to decide an application under Order 7 Rule 11 of the Code the averments made in the plaint are only required to be seen and not defence raised by the defendant nor it is open to the Court to reject the plaint merely by forming an opinion that on the averments made in the plaint, there was no chances of plaintiff's succeeding in the said suit. Thus, prima facie argument raised by Mr. Amar Vivek, learned counsel for the plaintiff-respondent looks to be attractive. However, when the matter is considered in depths the same cannot be accepted in view of the special facts and circumstances of this case. It is not in dispute between the parties that after the termination of the services of the plaintiff-respondent, an application under Order 6 Rule 17 of the Code was filed for amending the suit to challenge the order of termination by claiming it to be subsequent event. The said application was dismissed. In the revision filed against the said order this Court was pleased to specifically held that the passing of order of termination on different grounds gave a distinct cause of action to the plaintiff. In the absence of challenge to the order of termination it cannot be said that there is any subsisting cause of action with the plaintiff. The Hon'ble Supreme Court in **T.Arivandandam Vs. T.V.Satyapal and another AIR 1977 SC 2421** has been pleased to lay down as under:-

> "5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement

of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful – not formal-- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O.VII R.11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O.X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch.XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi "it is dangerous to be too good."

6. The trial Court in this case will remind itself of S.35-A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate

haring to the partes concerned."

Similarly, Hon'ble Supreme Court in the case of **I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and others AIR 1998 Supreme Court 634** has been pleased to lay down as under:

"12. The first point here is whether the power to reject the plaint under Order 7, Rule 11, CPC can be exercised even after the framing of issues, and when the matter is posted for evidence. This point has arisen because the Division Bench of the High Court has referred to this aspect while dismissing the appeal.

13. We may state that in the context of Order 7, Rule 11 CPC, a contention that once issues have been framed, the matter has necessarily to go to trial has been clearly rejected by this Court in Azhar Hussain Vs. Rajiv Gandhi 1986 (Supp) SCC 315 (p.324): (AIR 1986 SC 1253, para 12) as follows:

" In substance, the argument is that the Court must proceed with the trial, record the evidence, and only after the trial.....is concluded that the powers under the Code of Civil Procedure for dealing with a defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and

bound to prove abortive should not be permitted to occupy the time of the Court".

The above said judgment which related to an election petition is clearly applicable to suits also and was followed in Samar Singh V. Kedar Nath 1987 (Supp) SCC 663: (AIR 1987 SC 1926). We therefore, hold that the fact that issues have been framed in the suit cannot come in the way of consideration of this application filed by the appellant under Order 7, Rule 11, CPC."

In view of the law laid down in the judgments referred to above it has to be observed that in case the proceedings are meaningless and will merely result in wastage of time of the Court without there being even remote chances of success of the plaintiff in that suit the power under Order 7 Rule 11 read with Section 151 CPC can be exercised in exceptional circumstances.

In view of above discussion, this revision petition is allowed. The impugned order is set aside and the application moved by the petitioner under Order 7 Rule 11 of the Code is allowed.

However, liberty is granted to the plaintiff-respondent to institute a fresh suit to challenge the order of termination and claiming all the reliefs available to her in pursuance to the harassment caused and resulting from termination of her services.

(Vinod K.Sharma)
Judge

September 19,2006
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